IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.607 OF 2003

Vitthal alias Balu Changdeo Veer)
Aged-35 years, Occ.Agriculture)
R/o. Sangvi, Tal-Khadala,)
District - Satara)
At present : Kolhapur Central Prison)
Kalamba, Dist.Kolhapur-)
416007) ..Appellant
(Org.Accused)

Versus

The State of Maharashtra)
(Through Khandala Police Station,)
Khandala)) ..Respondent

Mr.Rajan Salvi, Advocate for the appellant.

Mr.K.V.Saste APP for the State.

Coram : V.C.Daga &
R.S.Mohite,JJ

Date : 31.01.2007.

Judgment : (Per : R.S.Mohite,J)

1. This is an appeal filed by the appellant (hereinafter referred to as "accused") impugning the judgment and order dated 27.12.2002 passed by the Ist Ad-hoc Additional Sessions Judge, Satara in Sessions Case No.16 of 2002. By the impugned judgment and order the accused has been convicted for an offence punishable under Section 302 of IPC and was sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/-, in default of payment of fine, to undergo R.I. for one year. The accused was also convicted for

the offence punishable under Section 452 of IPC and on this count, he has been sentenced to suffer R.I. for 4 years and to pay a fine of Rs.5,000/-, in default of payment of fine, to suffer R.I. for 6 months.

2. The prosecution case was briefly as under :-

(a) That the deceased Vatchalabai was residing in an area known as 'Matha' in village Sangavi, Dist. Satara. She had 2 sons and they were also residing separately with their wives and children in the said village. The accused Vitthal was also a resident of the same village.

(b) At about 10.45 A.M., PW-4 Shivaji Laxman Shinde was taking his cattle for grazing by a road which passed next to the house of deceased Vatchalabai. He heard the shout of a woman. He then went to teather the cow and calf to a nearby tree and thereafter he went to the house of Vatchalabai to see as to what was the matter. He saw the accused assaulting Vatchalabai with a knife. The accused also saw PW-4 Shivaji Shinde and on seeing him accused made a gesture by keeping his index finger on his lips asking the witness to remain silent. Shivaji Shinde (PW 4) saw the deceased Vatchalabai lying in a pool of blood and he also saw that the clothes of the accused were stained with blood. Since he was frightened, he took his cattle away from the spot to another land near Allied Company. Later, at

about 1.00 P.M., the accused arrived there and told Shivaji Shinde (PW 4) that he has demanded Rs.2000/- from the deceased Vatchalabai and since she did not pay that amount, he had killed her. He also asked Shivaji Shinde (PW 4) not to disclose this incident to anybody. PW-4 Shivaji Shinde then returned to his home and disclosed the incident to his wife. His statement was recorded by the police on the next day and he claims to have disclosed the incident to the police when his statement was recorded on the next day.

(c) According to the prosecution, the incident was also separately witnessed by another witness i.e. (PW 1) Vatchala Baban Veer. According to her on 19.10.2001 she had gone to the land of Ramchandra at about 11.00 A.M. alongwith 2 other ladies by name Nakubai and Shantabai. While she was on the said land, she heard deceased Vatchalabai shouting and asking Balu not to beat her. She heard the shouts of deceased Vatachalabai from a distance of 50 feet and thereafter went to the house of deceased Vatchalabai. She saw the deceased Vatachalabai lying in a pool of blood. PW-1 Vatchalabai then went back to the place where she was working and told the incident to the ladies i.e. Nakusa, Kalawati and Shantabai. The accused then came to the place where they were working and again made a gesture to (PW 1) Vatchalabai Veer by putting his finger on his mouth and thereafter went to the maize crop and thereafter (PW 1) Vatachalabai, Nakusabai and

Shantabai went in the direction of the school. In the meanwhile, the accused again came there after having changed his dress. The Complainant also came and met deceased Vatachalabai and asked as to who has killed his mother. The witness stated that it was the accused who has killed Vatachalabai.

(d) The prosecution further examined (PW 6) Dilip Kundlika Veer who is the son of the deceased. He stated that on 19.10.2001 he and his mother got up in the morning and after taking tea he had been to the land of one Dnyanoba Maroti Veer for sowing operation. At about 10.30 A.M. he was returning to his farm house for taking meals. At that time one Sanjay met him on the way and told him that his mother has sent meals for him and therefore, both of them went back to the land of Dnyanoba Maruti Veer and were taking their meals. While they were sitting there, at about 11.30 A.M. one Nanda Dattatraya Borawake told him that while she was coming, she heard the shouts of his mother from her farm house and therefore he went to the farm house and after opening the door, he found his mother lying in a pool of blood. He found that his mother was sustained injuries on her neck. He went to the road and was crying. One Yeshwant Newase arrived there, to whom he told what he had witnessed. Both of them again went to the farm house and saw the dead body of Vatachalabai. Thereafter they both proceeded to Shirwal on the motor cycle. They met the Police patil on the way. Dilip

Veer (PW 6) informed about what he had witnessed to the police patil who again brought PW-6 to his farm house. Police patil inspected the dead body of Vatachalabai and then again returned to Shirwal police outpost. (PW 6) Dilip Veer then lodged FIR (Exh.30) in the Shirwal police outpost.

(e) The FIR was registered by PW-7 PSI Satish Mane. After recording the FIR at the Shirwal out post the same was sent by PSI Satish Mane to Khandala police station and there it was registered at C.R.No.113/2001 and thereafter police visited the place of the incident and prepared spot panchanama as well as inquest panchanama. While recording the statement of Vatachalabai Veer (PW 1) and Shivaji Shinde (Pw 4), the police learnt that the murder was committed by the accused. Accused was therefore, arrested. On 23.10.2001 the accused is said to have made a voluntary statement regarding production of his clothes and the knife. This statement was reduced to writing under a memorandum panchanama and in consequence to the statement, the blood stained clothes of the accused and knife was seized from the bushes near a temple. The articles which were seized were sent to Chemical Analyser. Investigating officer then collected post mortem notes and drew the map of the place of the incident. Ultimately, after completion of investigation, the charge-sheet came to be filed.

(f) At the stage of the trial, prosecution examined 7 witnesses to prove its case. (PW 4) Shivaji Shinde was examined as an eye witness. (PW 1) Vatachala Veer was examined as a corroborating witness who has seen the accused alongwith deceased when the deceased was lying in a pool of blood. (PW 2) Vijay Lokhande was examined as a panch to prove the spot panchanama. (PW 5) Ajij Mujawar was examined as a panch to prove the memorandum statement and the recovery panchanama under which blood stained clothes and a blood stained knife were said to have been recovered at the behest of the accused. (PW 3) Dr.Khalil Tamboli was examined, as he had conducted the post mortem. (PW 6) Dilip Veer who was the son of the deceased was examined as he was the Complainant and (PW 7) Satish Mane PSI was examined as Investigating officer.

(g) The defence of the accused was of total denial. The accused did not lead any defence evidence.

(h) After considering the occular and documentary evidence adduced by the prosecution on record the trial Court was pleased to pass the impugned judgment and order convicting and sentencing the accused as aforesaid.

3. We have perused the entire record. In our view, the benefit of doubt is required to be given to the accused and the appeal deserves to be allowed for the

following reasons :-

(A) We are firstly unable to persuade ourselves to accept the evidence of (PW 4) Shivaji Shinde. Firstly Shivaji Shinde claims to be a witness who was passing along side the road where the house of deceased Vatachalabai was situated. According to him he was taking his cattle along road when he heard shouts of deceased Vatachalabai and therefore, after teathering his cow & calf, he went to the house of Vatachalabai and saw the entire incident. We first notice the rather unusual conduct of this witness as after noticing accused stabbing Vatachalabai he has not disclosed about this incident to the police patil and has not approached the police to disclose what he had allegedly seen. He claims to have disclosed about the incident to his wife when he returned back to his home in the evening. Prosecution has not examined the wife of this witness to corroborate the version given by him. (PW 1) Vatachala Veer who is another person who claims to have reached the spot when the accused was still present near the body of Vatachalabai lying in a pool of blood, does not say a word about presence of (PW 4) Shivaji Shinde at the said spot. (PW 4) Shivaji Shinde stated in his evidence that he was at the spot for 2 to 3 minutes and it would have been natural for (PW 1) Vatachala Veer to see him on the spot. He admits in his evidence that he has not informed about the incident to anybody. In his cross-examination he

has given a different version about the disclosure to his wife and states that for the first time he disclosed about the incident to the police. He further admitted in his cross-examination that he has not stated in his police statement that he was frightened. He admitted that he has not stated in his police statement that he saw deceased lying in a pool of blood. He admitted that he could have gone to Shirwal police station after 5.00 P.M. and that he could also told the sons of Vatachalabai or to the police patil about the incident. He admitted that the sons of Vatachalabai, Balu & Dilip were residing only at the distance of 50 to 60 feet away from his house. In view of this conduct, we find unsafe to rely upon his evidence.

4. The evidence of (PW 1) Vatachala Veer also does not inspire confidence. She claims that she heard the shouts of deceased Vatasalabai when she was working alongwith Nakubai and Shantabai. Both these ladies were not examined by the prosecution. She claims to have gone to the house of Vatachalabai but her presence there is not deposed to by Shivaji Shinde (PW 4). According to this witness the Complainant Dilip Veer had come to deceased Vatachalabai's house while she and the other ladies were working in the field and asked her as to who killed his mother. This version is completely different from the version given by Dilip Veer about the manner in which he learnt about the

deceased being killed. The evidence of (PW 6) Dilip Veer does not indicate that he learnt about the name of the assailant from any person prior to filing of his FIR. In fact, the FIR (Exh.30) clearly narrates that his mother was done away by un-known persons. In this view of the matter, evidence of Vatachala Veer (PW 1) in this regard is clearly falsified by the evidence of (PW 6) Dilip Veer. Therefore, we would prefer to dis-believe the evidence given by (PW 1) Vatachala Veer.

5. The evidence relating to the recovery of the knife and blood stained clothes of the accused must be dis-regarded because there is absolutely no evidence to show that the said articles said to have been recovered at the behest of the accused were sealed. The panchanama does not mention about the sealing and the panch did not depose about the sealing of these articles. The record clearly indicates that police had also taken a bottle of blood from the accused which was sent to the Chemical Analyser. Taking of blood from the accused was not done under any panchanama and there is no evidence to show that as to whether, how and when this bottle was sealed. In view of these state of affairs, the finding of blood on the clothes and the knife said to have been seized at the behest of the accused cannot be given much importance.

6. The learned APP then placed reliance upon the extra

judicial confession. We find the circumstances attending the making of such extra judicial confession to be un-natural and there was no reason for the accused to approach (PW 4) Shivaji Shinde later on the day only to disclose the motive of his killing Vatachalabai which according to the prosecution, was that Vatachalabai did not give him Rs.2000/- which he had demanded from her. The record clearly indicates that deceased Vatachalabai have several enemies. She was a party to several civil suits and serveral criminal proceedings. She had also filed a suit against her own son. She had enemity with several other villagers. The motive attributed to the accused appears to be very weak.

7. Taking an overall view of the matter, we find that this is a case where benefit of doubt must go to the accused. In the circumstances, the appeal is allowed. The conviction and sentence imposed upon the accused is quashed and the accused is acquitted of all charges. The impugned judgment and order passed by the Ist Ad-hoc Additional Sessions Judge, Satara on 27.12.2002 in Sessions Case No.16/2002 is quashed and set aside. The accused will be entitled to a refund of fine, if paid. Appeal stands disposed off accordingly.

(V.C.Daga,J)

(R.S.Mohite,J)